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# **Institutionalizing Freedom as Non-domination: Democracy and the Role of the State**

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*Abstract: This article critically examines neo-republican democratic theory, as articulated by Philip Pettit, with respect to its capacity to address some of the pressing challenges of our times. While the neo-republican focus on domination has great promise, it mistakenly commits to the position that democracy—the primary tool with which we fight domination—is limited to state activity. Examining this error helps us make sense of two additional problems with his theory: an overestimation of the capacity of legislative bodies to identify sufficient responses to practices of domination, and the potential conflict between avoiding state domination of the general citizenry and avoiding state domination of a part of it. Minimizing domination is simply too demanding and complex a task for us to rely on one institutional structure, no matter how well designed, to accomplish.*

*Key words: republicanism; non-domination; democratic theory; statism, Philip Pettit, civil society*

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The neo-republican conception of freedom as non-domination provides an appealing alternative to liberalism as a political philosophy for contemporary times. Indeed, a number of scholars have suggested in recent years that republicanism may be a more useful resource for grappling with our contemporary political dilemmas than liberal political thought.<sup>1</sup> If liberalism struggles to produce the theoretical resources necessary to respond to the “the ‘hollowed-out’ politics of contemporary market societies that neo-liberalism is creating,” perhaps a revived republicanism can point the way to “a route back to the values of freedom and democracy.”<sup>2</sup>

Whatever the attractions of the neo-republican conception of freedom as non-domination, we must also examine neo-republicanism as a theory of institutional political power in order to evaluate its potential. While a robust literature on freedom as non-domination and neo-republican political theory generally has emerged in recent years, republicanism’s relationship with democratic political structures has been “the great absentee” in this body of work.<sup>3</sup> Neo-republican theorist Philip Pettit offers an account of institutional republican democratic politics designed to provide a blueprint for a legitimate government, serving the cause of non-domination.<sup>4</sup> Recently, a number of scholars have argued that Pettit’s commitment to majoritarian democracy is insufficiently robust, and his faith in elite interventions too great.<sup>5</sup> This objection has merit, but it is only one dimension of the problem with Pettit’s vision for republican democratic institutions. More broadly, his characterization of the relationship between democracy and the state exaggerates the conceptual tightness of the link between them.

This essay will give a more complete picture of the potential problems of Pettit's account of republican democracy and will suggest amendments that remain true to the normative core of his neo-republican commitments. The flaws in Pettit's institutional structure provide an opportunity to rethink the nature of the relationship between republican goals and the state, and the way republicans ought to conceptualize democracy.

The first section of this article will give a brief overview of Pettit's democratic theory—his technique for institutionalizing freedom as non-domination—with particular attention to the strengths of his approach. I will then consider the conceptual boundaries of democracy in his account. I argue that they are unnecessarily narrow and err in excluding, from his account of democracy, a variety of forms of civil society activity, especially those not directed squarely at the government and not working on behalf of government by promulgating norms to support law. I use two examples of domination-reducing social movements that avoid the state, and give an account of why non-state activity of this sort ought to be part of our theory of democracy. The next two sections use the preceding criticism to amplify two further criticisms of Pettit's account of democracy, both of which can be improved by the suggested expansion of democracy's conceptual boundaries. The fifth section considers Pettit's potential responses to these criticisms, as well as some tensions within them.

Throughout, I examine Pettit's theory from the viewpoint of a sympathetic critic. Specifically, I find the conception of freedom as non-domination to be both attractive and revealing of some of the shortcomings of other prominent accounts of freedom, including freedom as non-interference. It is the institutional structure advocated by Pettit that is ultimately insufficient for achieving freedom as non-domination. The goal of non-domination will be well

served by rethinking the way it interacts with democracy and the state, and by abandoning Pettit's institutional monism.

### **Neo-republican Democratic Institutions**

For most theories of democracy, reducing domination is a fortunate secondary consequence of a democratic regime, rather than the primary rationale. Pettit's twist on republicanism makes opposition to domination central to the goal of republican freedom and republican democratic institutional arrangements. Freedom as non-domination is Pettit's central political value, for both communities and individuals.<sup>6</sup> This conception of freedom is designed to avoid some of the problems of traditional liberal conceptions of freedom (positive and negative). This conception is distinct from the classical Hobbesian conceptions of freedom, which treat all interference, regardless of its degree of arbitrariness, as an imposition on freedom. But it is also distinct from the positive conception of freedom which involves "the exercise of the facilities that foster self-mastery and self-fulfillment."<sup>7</sup> Republican freedom was replaced by freedom as non-interference at the end of the eighteenth century and more recently has been misinterpreted as a variation of positive liberty.<sup>8</sup>

But Pettit's republicanism is not primarily historical: he makes the case that regardless of its origins we ought to prefer the republican conception of liberty. Against those who would characterize his conception of republicanism (as compared to communitarian republicans) as minimalist, he hopes to show that recasting freedom as non-domination is a conceptually radical move that advances our understanding of freedom in a direction that liberals and communitarians are unable or unwilling to go. For Pettit, characterizing freedom as non-domination offers a more specific and accurate account of freedom than negative liberty, while remaining less intrusive

than positive liberty. Sometimes interference constitutes domination, and sometimes it does not. Furthermore, some circumstances of non-interference are inconsistent with freedom as non-domination. The paradigmatic case here is the “benign and permissive” slave owner, who formally owns a slave but does not interfere with that slave’s day-to day activity and movements.<sup>9</sup> This would also apply to states with a legal and practical capacity to arbitrarily interfere with citizens, even if they are not presently exercising that capacity.

Interference (or capacity to interfere) becomes a threat to freedom when it is arbitrary. According to Pettit, arbitrary interference is interference at the pleasure of the interfering agent, without respect or consideration for the interests or rights of the interferee.<sup>10</sup> How can state actions meet the standard of non-arbitrariness? According to Pettit, Under this conception of arbitrariness, then, an act of interference will be non-arbitrary to the extent that it is forced to track the interests and ideas of the person suffering the interference. Or, if not forced to track all the interests and ideas of the person involved—these may make inconsistent demands—at least forced to track the relevant ones. I may have an interest in the state imposing certain taxes or punishing certain offenders, for example, and the state may pursue those ends according to procedures that conform to my ideas about appropriate means. But I may still not want the state to impose taxes on me—I may want to be an exception....In such a case, my relevant interests and ideas will be those that are shared in common with others, not those that treat me as exceptional.<sup>11</sup>

This passage contains the core motivation behind Pettit’s theory of democracy, which is derived from his conception of freedom. Democracy is not only derived from his theory of freedom, it is required and valued *only* as a support for his theory of freedom. Without tracking the avowable common interest of the citizenry, state action would constitute *imperium*. Some method of the

tracking of avowable common interests<sup>12</sup> through a democratic process is essential for the application of republican freedom to the arena of state action, and this is what democratic governance can provide.

How can the democratic state be organized to assure that its actions will track the common avowable interests of the citizenry? Pettit offers a “two-dimensional” democratic model.<sup>13</sup> The first dimension of Pettit’s democratic theory is the “authorial” dimension—the legislative act of translating the common avowable interests of the citizenry into concrete plans of action. With properly designed democratic institutions, this approach will foster “the generative mechanism [that] will help insure that all policies whose implementation might advance common, recognizable interests will get a hearing.”<sup>14</sup> The generative capacity of democracy, perhaps best embodied in an idealized deliberative version of the legislative process, must be joined by an editorial function, or a “scrutinize-and-disallow” mechanism.<sup>15</sup> Pettit refers to this as the contestatory dimension of democracy, and analogizes it to the function of an editor: The editors may not be given the right to veto outright any piece authored by one of the writers. But clearly they can still exercise a great deal of editorial control. Instead of vetoing a piece they do not like, they can contest its publication before a meeting of the owners or before a meeting of a board appointed by the owners. They can argue that the journal or newspaper in question has such and such standards, or such and such a role, and that the piece in question does not fit. And they can expect to succeed in this sort of challenge whenever they make what is accepted as a good case.<sup>16</sup>

Pettit suggests this sort of secondary editorial or contestatory function in democratic politics is essentially to avoid what he calls “false positives” in realizing the will of the people—a generative function that avoided most or all false positives would have too many false negatives.

Pettit argues that “politically avowable interests are those, roughly, that are consistent with the desire to live under a shared scheme that treats no one as special.” As such, people or groups who are being singled out or treated in a (negative) special manner must have a set of ways to make their case.<sup>17</sup>

Pettit’s democratic theory seeks to construct a system in which domination is minimized. Pettit is acutely aware that domination can come from the state (*imperium*) but it can also come from a variety of other private or semi-private sources (*dominium*). Domination is a threat to freedom regardless of its source. Whether domination’s source is the state or non-state actors is secondary; its intensity, scope, and durability are what determine how great a threat to freedom it presents. Pettit’s democratic theory is constructed around the goal of balancing the twin threats of *imperium* and *dominium* by creating a state that is as likely and capable as possible of crafting policies and strategies that limit incidences of *dominium*, but with power checked (by contestatory procedures) so that it will not devolve into *imperium*. The contestatory dimension of Pettit’s democratic theory empowers individuals and collectives to ensure that state action tracks the common avowable interests of the citizens. The authorial-legislative function is designed to create a set of resources and ideas for the prevention of *imperium*, by providing avenues for the reduction and correction of errors in the contestatory function of democracy.

A noteworthy strength of Pettit’s approach to democratic theory is his emphasis on the importance of balancing these two threats, and identifying the commonality between state-based and non-state sources of domination. Pettit provides a distinctive and helpful way to think about the desirability of either placing limits on state power or expanding it, highlighting the particular tradeoffs of that difficult decision. Pettit’s conception of democracy as multidimensional, with different institutional manifestations for different stages and purposes, de-centers any one



particular institutional practice or arrangement within the state as being synonymous with democracy. Democracy is not wholly defined by the practice of majority rule.<sup>18</sup> Instead, majority rule is a significant part of how democracy serves its function, as a crucial check on *imperium* and a mechanism to ensure common avowable interests are tracked by government activity. Pettit's approach theorizes the connection between the value of democracy and the free and fair elections crucial in promoting that value. At the same time, it leaves space to think about how democracy can be compromised in spite of the presence of free and fair elections, through, for example, a lack of effective contestatory institutions or through legislators who mislead or ignore the common avowed interests of the citizens.

Does this model offer us a distinct alternative to a liberal political order? In broad strokes, probably not: the commitment to representative democracy with contestatory institutional checks fits well within the liberal tradition. There are good reasons to treat the relationship between liberalism and republicanism as more complicated than Pettit's historiography would suggest. Pettit's is considered by many to be much closer in practice to the liberal tradition than he recognizes,<sup>19</sup> and the assumption that liberalism is closely tied to the Hobbesian conception of freedom as non-interference has been convincingly called into question.<sup>20</sup> Nevertheless, one important area where his approach contains significant differences with the liberal tradition is with respect to the significance of the public-private distinction. Pettit is unwilling to place any particular sphere of social life off limits from political intervention in principle, because domination can occur in any social sphere, including those considered private in liberal thought. In comparing the general approaches to governance of republicans concerned with non-domination and liberals concerned with non-interference, Pettit notes that "republicans will be scandalized by social circumstances that are likely to leave unmoved those liberals whose only

concern is non-interference. They will take a more radical view of the ills that government is called upon to rectify.”<sup>21</sup> Other critics of liberal political thought, most notably feminist theorists, have articulated persuasive critiques of the use of the public-private distinction in curtailing political engagement with oppression in the (so-called) private sphere.<sup>22</sup> Pettit offers a welcome alternative foundation for democratic theory that can provide justification for political engagement in areas where domination has all too often successfully hidden from political contestation. Nevertheless, the match between his institutional model of democracy and the substantive purpose it is designed to serve is far from perfect. The following three sections explore this mismatch.

### **On Democracy’s Conceptual Boundaries: The Status of the State**

Pettit recognizes that the threats to freedom—potential sources of domination—are diverse in origin. However, his conception of democracy is associated exclusively with government. Democracy is working properly when the state, while tracking the common avowable interests of its people, works to limit *dominium*. The particular techniques used to achieve this goal remain open to contestation, which is necessary in order to prevent slippage into *imperium*. Policies which discourage, prevent, and/or prohibit acts of non-state domination are enacted via a democratically elected legislature, with the option of being challenged via contestatory mechanisms should they go astray. However, when civil society actors and groups resist and combat domination via any means other than the official contestatory institutional channels that comprise democracy’s second dimension, this activity is not, on Pettit’s account, classified as democratic activity. Pettit does acknowledge the existence of situations in which “the only hope of improvement may lie with initiatives in civil rather than political society” but such situations

are not part of his theory of democracy.<sup>23</sup> This runs contrary to the role of civil society in many accounts of democracy, which often insist we include civil society efforts in the struggle for democratic outcomes regardless of how, when and even if the state plays a central role in the process.

So how does Pettit see the role of non-state actors who seek to minimize domination? The role of non-state actors in achieving freedom as non-domination is considered in his discussion of “civility.”<sup>24</sup> Civil society, primarily through the norms it propagates and advances, has an important role to play in the successful achievement of non-domination—without such supportive norms, the law would be little more than a “dead, mechanical device.”<sup>25</sup> On Pettit’s account, civil society, through norms, supports laws that enhance non-domination. They do so in two ways. First, by providing a secondary form of sanction for violators, and second, by rendering effective implementation more feasible, through a reduction in the vigilance and direct enforcement required by agents of the state.<sup>26</sup> In both of these functions, civil society makes a contribution that is both secondary in importance to the law, and parallel to the law in substance and goals.

Pettit acknowledges a slight divergence from this parallel track in one of the three reasons he gives for the necessity of civility—he hopes that citizens might alert government officials of the need for changes in the law to better track their avowed interests in some way, as an informal part of democracy’s contestatory function.<sup>27</sup> But even here, the logic of the parallel track dominates; the role of civil society is to support non-domination through the law, whether by motivating a culture of compliance among the citizenry or by motivating the necessary legal changes in the legislature. The possibility of civil society supporting the cause of non-domination independently of the state and law does not appear to warrant consideration. Democracy—civil

society operating deliberately through the state's electoral system—is tasked, confidently, with “generating a rich supply of presumptive common interest policies,”<sup>28</sup> whereas civil society operating in any other way is merely expected to support some of those policies, rather than pursue significant anti-domination projects independently. As we shall see, there is no good reason to expect or demand this sharp divide.

In his more recent work, Pettit describes the conceptual terrain of republican theory in a way that seems to mark civil society activity as being out of bounds for democratic theory. The potential problem of *dominium*, and the organization of society such that individuals are well positioned to resist it, is what Pettit has recently called the problem of social justice.<sup>29</sup> This is conceptually contrasted with democratic justice or democratic legitimacy, which is concerned with the institutional arrangements and powers that serve to prevent *imperium*.<sup>30</sup> The former is concerned with domination on a horizontal axis; the latter on a vertical axis.<sup>31</sup> But in this conceptual map, the *dominium* problem, social justice, is treated largely as a question of the substance of law, policy, and implementation, in contrast to the procedural concerns associated with the latter. Social justice is something the state promotes by getting certain policy and implementation questions correct: Are the basic liberties recognized? Is equality sufficiently widespread? Are resources available to resist domination? These are treated primarily as questions of policy. Norms make an appearance insofar as they support these laws and policies, much in the same way described in *Republicanism*: “Insofar as the law is the work of a legitimate state, it will connect with public habits of mind and find support in communally endorsed norms.”<sup>32</sup> The parallel account of state and non-state activity persists, and the role of non-state activity remains distinctly secondary and separate from the realm of democracy, since

“democracy’s entire reason for being...is to guard against domination of the state.”<sup>33</sup> The relationship between the two realms is left virtually unexplored.<sup>34</sup>

The remainder of this paper demonstrates why this conceptual map presents problems for Pettit’s theory. Before explaining why, I will turn to two examples of organized efforts to advance non-domination independent of the state, and give a *prima facie* explanation of why a theory of democracy ought to include them. I will then, in the following two sections, explore additional problems that flow from Pettit’s unnecessarily restricted conception of democratic activity.

Tostan is a women’s rights and human rights NGO in Senegal, known for its role in ending the practice of female genital cutting. Tostan’s method is primarily educational, rather than explicitly “political” in the ordinary sense of the term:

In villages where female genital cutting is practiced, the Tostan training on human rights and health care empowers women to question the practice. The practice does not end until the men and women of the village (or of several intermarrying villages) come together to make a joint declaration to end it.<sup>35</sup>

Tostan’s agenda includes the elimination of a practice that is arbitrary and dominating in Pettit’s terms, and their approach has achieved considerable success.<sup>36</sup> Although Senegal passed a law banning some forms of female genital cutting in 1999, the state, predictably, has not rigorously enforced it; there were few arrests and no convictions between January 1999, when the law was passed, and June 2001.<sup>37</sup> Moreover, Tostan’s strategy was not to fight this practice through law or other mechanisms of state power, and the change in the law has not changed their basic educational approach to women’s rights. They did not seek laws against the practice, and the passage of such laws has made their work more difficult because the population became more

defensive about the practice. Indeed, there are good reasons to believe that criminalization tends to cause an increase in the prevalence of female genital cutting, as “legislation can be ineffective or counterproductive, failing to act as a deterrent, and instead sparking negative reaction.”<sup>38</sup> In other words, aside from some grants from agencies funded in part by governments (but not, notably, the government of the country in which they operate), Tostan’s actions are located entirely in civil society. Tostan’s approach to working against female genital cutting follows the same non-statist model that was used to successfully and rapidly eliminate the practice of foot binding in China, which had been a pervasive cultural practice for more than a thousand years.<sup>39</sup>

There are other reasons why efforts to enhance and advance the cause of freedom as non-domination might choose to avoid the state. In Tostan’s case, the use of the state was identified as bad strategy and bad politics. It could also be that the state—even one governed by institutions widely understood to be democratic—might have a relationship with a particular social group that has been so damaged by past failures and abuses that it may not be a viable institution for that group to utilize in their pursuit of greater freedom. This is the case in my second example: women of color working against domestic violence in their own communities. A recent anthology about the efforts of a group of women of color confronting domestic violence via an organization called Incite! provides an example of the dilemma faced by such activists, who are caught between two sources of domination.<sup>40</sup> Women of color face a similar dilemma: There are many organizations that address violence *directed at* communities (e.g. police brutality, racism, economic exploitation, colonialism, and so on). There are also many organizations that address violence *within* communities (e.g. sexual or domestic violence). But there are very few organizations that address violence on both fronts simultaneously. The challenge women of color face in combating personal *and* state violence is to develop

strategies for ending violence that *do* assure safety for survivors of sexual or domestic violence and that *do not* strengthen our oppressive criminal justice apparatus. Our approaches must always challenge the violence perpetrated through multinational capitalism and the state.<sup>41</sup>

Victims of domestic violence who are also members of a marginalized social group face the threat of what Cecile Laborde calls ‘double domination’—as members of the group, from the state, and as women, from their partners.<sup>42</sup> When faced with a state that has all too often been an active threat to one’s community, the calculus for combating domestic violence changes significantly. When a particular social group has a distinct and justifiable lack of trust in the state, given historical and ongoing circumstances, the proper role of the state in diminishing domination may be substantially reduced, at least in the short and medium term. Women of color have good reason to distrust many of the forms of state power available to combat domestic violence, particularly the police and criminal justice system. For many activists in this community, a truly democratic strategy to combat domestic violence in communities of color must take pains to avoid and bypass the available tools of the state, as the use of these tools in their view simply empowers what has been and continues to be a dangerous and violent force even as it confronts domestic violence.

Tostan and Incite! provide vivid examples of moments where a democratic, domination-reducing goal is not best pursued through the traditional democratic mechanisms provided by the state, and where civil society’s role in achieving non-domination exceeds the adjunct, parallel account of its value offered by Pettit. We need a democratic theory that recognizes that the state’s contribution to non-domination is necessarily limited, but our collective, democratic efforts to reduce domination need not share those limits. One reason to include such activity in

our conception of democracy is that it helps us gain a clearer vision of the state and its potential role in achieving non-domination through a consideration of the limits of the state. Tostan and Incite! give us examples of circumstances in which the state might prove inadequate for general and specific reasons, respectively, leading to the necessity of non-state actors pursuing non-domination independently, in Tostan's case, and oppositionally, in the case of Incite!

Pettit is keen to emphasize the parallel role norms play in supporting and promoting just law. Good law "can recruit such beneficial, communal norms to the cause of its enforcement."<sup>43</sup> This optimism makes sense in a supportive normative environment. But what of a situation where prevailing norms work against the goal of non-domination?<sup>44</sup> That is precisely what Tostan encountered in the villages where the genital cutting of girls was widely practiced and endorsed. The power of the democratic, non-dominating state to shape and craft norms is a limited one not best suited to a wholesale normative shift. As Pettit explicitly recognizes in his discussions of the law-norm dynamic, the coercive power of the state is a limited resource; it cannot be deployed endlessly due to both limited capacity as well as the dangers associated with a police state. Efforts to change norms in order to advance non-domination might sometimes need to be independent of the state. The reasons for this are related to the reasons that the state needs norms to do some of the work the law would otherwise have to do: because they do not use coercive power, non-state actors are less likely to inadvertently produce domination in pursuit of non-domination.

There are two reasons why state action against normatively endorsed domination might produce *imperium*. One has to do with the site of domination. I earlier praised republican theory for breaking out of the liberal version of the public-private distinction, because domination can take place in the private sphere as well. But while the liberal conception of the private realm as



inviolable and apolitical was mistaken, that tradition is right to worry about the state as a direct agent of change in the private sphere. The private sphere is a place where the dangers of direct state intervention are heightened and demand additional scrutiny. In a country in which prevailing public norms do not authorize or endorse female genital cutting, laws prohibiting it may be a practical way to pursue social justice. But when the norms do support such a law, the capacity for a law to change the norms is limited. The state needs the kind of ‘advance agent’ work that Tostan is able to do, since “conversion through persuasion is often more effective since it seeks to have people internalize new moral notions, rather than simply comply with them.”<sup>45</sup> In addition to this danger, the coercive threats implicit in state action may have counterproductive psychological consequences, since placing those whose norms you seek to change on the wrong side of the law at the beginning of the process undermines the next several steps in the process. It is simply too oppositional for the task at hand. This holds even when the threatened state violence is unlikely to materialize, as in the case of Senegal's anti-female genital cutting law.

The above discussion has focused on those cases in which the normative change required for non-domination renders the state an ineffective tool for reducing domination as a general matter. In these cases, the task called for—making major changes to social norms and to common behaviors and choices in the intimate sphere of family life—are not well suited for typical state interventions. But the world is, in fact, populated with actual states, virtually all of which have fraught histories with some of the social groups who comprise their citizenries today. In addition to general reasons to look to non-state agents to reduce domination, there are likely to be specific reasons as well. The Incite! case discussed above provides a good example. One of the state’s primary tools to reduce the domination implicit in domestic violence is criminalization. But in the United States, the relationship between African-Americans and the

state (particularly the criminal justice system) is not merely about the restraint of would-be dominators acting against other members of their community, or against society at large. The criminal justice system has long been utilized as a site for institutionalized oppression of African-Americans as a group.<sup>46</sup> In short, there was a particular reason, specific to both the history of and ongoing tension between that state and that group, which made the standard state approach to this issue problematic from an anti-domination perspective.

Before we dismiss this as a special case, it is worth recalling that most states, even relatively legitimate ones by most standards, very often have contentious histories with some minority populations.<sup>47</sup> Jeff Spinner-Halev has recently argued that a commitment to liberalism might sometimes require setting aside standard liberal norms of governance—what he terms a "liberal detour"—with respect to a group in a state, when that group has a long and justified history of distrust of the state.<sup>48</sup> The same logic might steer us away from using the state as the primary tool of non-domination where we otherwise might, in cases where its effectiveness and reliability with a particular population have been too damaged to be used for that purpose now.

Tostan and Incite! are examples of efforts to reduce domination through collective activity and organizing, which occur in an environment where the state is simply the wrong tool for the job. Regarding the appropriate policies for reducing domination, Pettit insists that “the forms they take should be determined in good part by the empirical experience of the effects of different policies.”<sup>49</sup> However, the question of what kind of institution is best suited to confront a particular case of domination should be subjected to the same test. By ignoring what may be the best answer to the question of how to promote non-domination in a range of specific cases, Pettit places himself in a position where he will be sorely tempted to expect too much of the state. This expectation prevents him from adopting a sufficiently clear-eyed approach, soberly assessing the

strengths and weaknesses of the state as an agent of non-domination. The next two sections identify specific shortcomings in this regard.

### **Overestimating Legislatures**

Pettit's democratic theory demands a great deal from the legislatures in democratic states, the primary site of democracy's "authorial" function. In explaining how the pressure of election and re-election will ensure democratic processes will produce "a rich supply of presumptive common-interest policies,"<sup>50</sup> Pettit gives

his theory of democratic politics in action:

...the policies that people are invited to author will tend to include all half-plausible candidates for being matters of common avowable interest. *There should be relatively little danger of politicians and people failing to detect any matters of common avowable interest.* False negatives should not be a major problem.<sup>51</sup>

In a more recent essay, Pettit further clarifies his expectations of the legislature in different institutional contexts. Both parliamentary systems and the "Washington system" of the U.S. have mechanisms to "ensure that its decisions satisfy the minimal criteria of rationality."<sup>52</sup>

Westminster systems can reach this goal because parties that come to rule will be able to "satisfy consistency and other such conditions across the different laws and initiatives it supports." They do so because the alternative would be to subject themselves to "electoral ridicule."<sup>53</sup> In Pettit's view, the "Washington system" does not feature rule by disciplined, strong political parties but "rationality appears to be assured" because the governing coalition "is subject to the discipline of being interpreted by the Supreme Court as if it were a rational center of judgment and intention."<sup>54</sup> Finally, in an essay in which Pettit extends his republican theory to the international

sphere, Pettit suggests that the construction of republican international order need not be concerned with “abuses of human rights and shortfalls of human welfare” in representative states because “there will normally be effective legal and political means of contestation and correction within those (effective and democratic) countries.”<sup>55</sup> Pettit’s expectations for ordinary legislative politics appear to be quite demanding.

There are good reasons to believe that this faith in contemporary democratic legislatures is excessively optimistic. There are many reasons why false negatives remain a problem in legislative democracies. Politicians are likely to have incentives to avoid the risks associated with the promotion of new ideas, because of the nature and configuration of the political coalitions in and between major political parties and because of the electoral security provided by incumbency. Furthermore, in some countries, including the United States, the geographic distribution of social groups and political gerrymandering have produced a high proportion of “safe” seats for established parties. This often leads to legislators who adopt a strong party line rather than attempt to make a creative contribution to the challenges that face the common good. In short, Pettit’s position doesn’t take into account a great deal of what we know about electoral politics, including but not limited to the flaws in the functioning of political parties, the tendency to emphasize rhetoric and framing rather than policy goals in political campaigns, the extraordinary difficulty in making major changes to the legislative agenda, and the crafting of political messages to appeal to narrow target groups of voters rather than the common interest.<sup>56</sup>

Empirical scholarship on the legislative process in modern democracies confirms these concerns. The study of agenda setting, for example, makes clear how difficult and unpredictable it is for a particular issue to find its way onto the legislative agenda.<sup>57</sup> The leading models of agenda setting and policy change in politics points to long-standing periods of “stability” in

policy subsystems and issue areas, which are punctuated by brief (and often unpredictable) moments in which substantial policy change occurs. The moments that change is possible often have little to do with the degree to which there are problems that need to be solved in this issue area. Furthermore, in those rare moments when a particular issue manages to make it on the legislative agenda, the range of possible solutions can be limited by who is able to exert influence over content. Legislation and administrative rules are often products of “iron triangles”—tight, exclusionary networks of subcommittee members, bureaucrats, and interest groups. More recent scholarship has suggested that the concept of iron triangles should be replaced with the more open and flexible concept of “issue networks,” but these also suggest an over-representation of interested parties, including those representing the regulated industry.<sup>58</sup>

Finally, all contemporary democracies contain multiple veto points in the legislative and governing process, which provide opportunities to block reforms that threaten a particular minority interest.<sup>59</sup> In order to facilitate the goal of non-domination for individuals against a potentially dominating majority, Pettit has endorsed a wide array of non-majoritarian checks and veto points in his democratic theory. Despite his acknowledgement that veto points can lead to blocking legitimate change that reduces domination,<sup>60</sup> his actual proposals, which include a number of “depoliticized” bodies that take politically charged issues out of the hands of the people and their representatives,<sup>61</sup> create a particularly strong danger of legislative gridlock, inaction, and policy ‘drift’ that benefits powerful interests.<sup>62</sup>

In short, Pettit’s hopes for legislative politics are naïve in the political context of modern liberal democratic political systems. Non-ideal democratic theorists must confront the fact that what Pettit calls the “false negative” problem is not inherently and entirely solvable through ordinary democratic electoral and legislative politics even under the best circumstances. In some

cases, a democratic goal can also (or perhaps only) be accomplished, as the Tostan example suggests, by bypassing the state altogether. If Pettit's expectations for ordinary legislative practice were plausible, there might be less need for non-state forms of democratic political action. But given what we know about the complexities of the multiple causes and agents of social change, the case for understanding democratic practice as more than simply legislative democracy is strong. The linking of democratic change to state action presents a limited view of what democratic change is likely to bring about, which should be particularly troubling in cases of severe, widespread and normatively endorsed forms of domination. Pettit writes:

There is a built in brake, then, on how much republicanism is going to want the state to do. The ideal of non-domination is not the sort of monstrous ideal that is liable to require ever more intensive degrees of state interference in the lives of ordinary people. *Whatever optimism it encourages in regard to state action, it is an inherently satiable or moderate goal.*<sup>63</sup>

This passage is meant to assuage liberal fears about the implications of Pettit's republicanism; to assure them that while this theory might empower state action in some ways, it retains a limited and skeptical view of the state. Pettit's concern with avoiding slippage into *imperium* through an over-empowered and insufficiently restrained state is wise and well-placed. However, it leaves unanswered the question of how to address forms of domination that the state, so constrained, is not well-positioned to correct, particularly when that form of domination is broadly endorsed by social norms. For example, we might expect that laws against female genital cutting, where it retains broad normative endorsement, will go almost entirely unenforced, as in Senegal. Or if enforcement is attempted, it might have the practical effect of licensing a form of state intervention that constitutes *imperium*, because the enforcement of a ban on a practice physically

located within the home and family likely would be arbitrary and intrusive in practice. The state, it turns out, is often a powerful instrument for reducing domination but can be an overly blunt one as well. It is certainly not the best tool for reducing non-state domination in all cases. The limitations of legislative politics further highlights the need for a broader theory of democratic change.

### ***Imperium, Partial and General***

Democracy exists, first and foremost, to prevent *imperium*, by placing political power under the control and direction of the people in a manner sufficient to prevent, or at least significantly lessen, the capacity and prospect of those who hold political power to engage in *imperium*. The previous section raised some questions about a central mechanism in this process; this section will identify a related concern that begins with a potential problem with Pettit's conception of *imperium*, which comes in two distinct forms. The first form which is designed to be prevented by democracy's legislative, authorial function, is a state that disregards the avowed interests of the citizenry as a group and rules them in a manner not tied to those interests—in other words, arbitrarily. Let's call this general *imperium*. But a second kind of *imperium* is possible as well—namely, that which occurs when the state dominates a specific part of the larger citizenry. Let us call this partial *imperium*. It is to that threat, and the resources that Pettit's theory of democracy provides to prevent it, which we now turn.

Pettit's formula to prevent partial *imperium* lies in the second half of his institutional theory of democracy, its contestatory institutions. In recent writings he has addressed what he calls the problem of the "sticky minority." This exists where majority and minority preferences on an issue are sufficiently stable that the minority has no plausible chance to win, now or in the

foreseeable future, creating a circumstance in which “equal votes are not enough to ensure equally accessible influence” over political outcomes.<sup>64</sup> The solution, in such cases, is contestation: such groups must maintain a “right of appeal to independent authorities for the assessment and, if necessary, rectification of their complaints” via “courts and tribunals, and the officials or ombudsman or auditor bodies.”<sup>65</sup>

It is important to note the scope of this contestatory democratic power, however: it is limited to contestation in line with that which can be commonly avowed, or as he recently put it “received, popular criteria.”<sup>66</sup> Such contestation comes from groups whose existence, distinctive needs and interests, and vulnerability “are a matter of common awareness in the society at large.”<sup>67</sup> In other words, the general issues—the existence of the group, the notion that they might have oppositional interests to society at large and are vulnerable under society-wide majoritarian decision making, and so on, must be widely agreed upon and perceived by all of society. This appears to have two distinct shortcomings for the provision of freedom for such a group. First, the public may not avow principles amenable to that group’s freedom out of indifference or hostility. Second, some social dynamics may not be on the register of avowability, as Fabian Schuppert observes: “social stratification, sexist public culture, or everyday racism have become a kind of false second nature that is part of the people’s subconscious framing of the world.”<sup>68</sup>

The closest that Pettit comes to a direct consideration of the first case, in which the majority simply rejects the argument that a dominating state action is, in fact, dominating, out of indifference or hostility, is a brief comment on “worst-case scenario” situations, in which the minority “cannot view the judgment against them as anything other than an exercise of arbitrary power.”<sup>69</sup> If such a case is extreme, Pettit suggests that secession may be the best option if it is



feasible, while in less extreme cases an exemption from general laws may suffice.<sup>70</sup> In the latter kind of case, Pettit would treat systemic and unconscious threats to unfreedom as a "vitiating" or "vitiating hindrance" of that agent's freedom.<sup>71</sup> A vitiating hindrance contrasts with an invading hindrance—the latter directly and intentionally cuts off a particular path or choice, whereas the former is more indirect, reducing the resources available to pursue particular choices or otherwise reducing the range of choices available without directly cutting off a particular path.<sup>72</sup> While Pettit's terminology may be able to identify this category of concern, his democratic theory has little to say about it: his focus is squarely on what he takes to be the greater threat to freedom, invading hindrances. Insofar as vitiating hindrances generally concern the removal of resources, his path toward insuring freedom from vitiating hindrances generally focuses on providing sufficient social and economic resources.<sup>73</sup>

These responses are not sufficient to address the problem of partial *imperium* in a world where most states contain contentious and distrustful group dynamics across substantial power differentials. Once we properly consider the scope of the potential dilemma here, we must confront the possibility that a state may face a dilemma where it cannot help but countenance *imperium*. The state might be forced to choose whether to follow the common avowed interests of the citizenry, even though this involves dominating, via partial *imperium*, a particular minority group whose grounds for contestation cannot pass the publicity test. But if the state resists becoming an agent of partial *imperium*, it risks general *imperium*, by disregarding the citizenry's commonly avowed interests.

This dilemma is rarely recognized and considered by Pettit,<sup>74</sup> but a theory of freedom as non-domination should confront the dilemma directly, in at least two ways. First, by acknowledging that the dilemma exists, the need for guidelines becomes clear. When a state

must choose between becoming an agent of partial or general *imperium*, how should it make that choice? It is tempting to say “the state should avoid the more severe form of domination whether that be *imperium* or *dominium*” since freedom is, generally speaking, effectively promoted when overall domination is minimized, but Pettit’s recent comments on the priority of democracy over justice might suggest we should place our thumb on the scales in favor of avoiding general *imperium*.<sup>75</sup>

Second, this gap in Pettit’s democratic theory further highlights the value of an account of supplementary approaches to reducing domination. While non-state agents don’t have the coercive power of the law behind them, in other ways they have a kind of freedom to act with as much or as little regard for the commonly avowed interests of the general citizenry as is strategically advisable. Citizens can attempt to influence and change the views and behavior of fellow citizens without respect to their avowed interests, but still not dominate them, as long as the power they exercise over their fellow citizen is sufficiently constrained.<sup>76</sup> They might serve a crucial role in providing resources to resist possible *imperium* (or *dominium* that the state cannot prevent without slipping into *imperium*), by fighting the vitiating effects of everyday racism, sexism, and the like. Once the gaps in the state’s capacity to deliver freedom as non-domination are better understood, the necessity for democratic theory that looks beyond the state becomes a great deal clearer.

### **Potential Responses**

How challenging to Pettit’s version of republicanism is this line of critique? His theory of republicanism seeks to be not just a normative vision but also a practical, non-ideal political theory. He is optimistic that freedom as non-domination meets all relevant feasibility constraints

we might wish to impose on a supreme political ideal in the world today.<sup>77</sup> Neo-republicanism, according to Pettit, should be treated like a “research program, not a comprehensive blueprint or ideology.”<sup>78</sup> It holds the advantage that “unlike more idealized competitors, it is a research program that can be explored, not just by thinking out its implications in theory, but also by putting them into political practice,”<sup>79</sup> all while working within “the constraints imposed by the psychological and sociological realities of human life.”<sup>80</sup> If neo-republicanism were merely an ideal theory, the above criticisms might be less worrisome. But it is clear Pettit understands neo-republicanism as both an ideal and non-ideal theory, where the ideals and principles of the former offer guidance for our efforts to engage in non-ideal theory. Recently a number of advocates of non-ideal theory have challenged the notion that it ought to be pursued with ideal theory providing guidance, as either a target or benchmark.<sup>81</sup> My effort here can be read as an attempt to defend neo-republicanism from this conclusion, by testing the theory’s capacity to address some persistent and predictable non-ideal facts about states. While his normative ideals, and a great deal of his institutional democratic theory can survive this test, one area where amendment is required is with respect to his “all or nothing” approach to the pursuit of non-domination, to which I now turn.

There can be little doubt that the state’s role in minimizing domination must be substantial. In questioning Pettit’s account of the relationship between democracy and the state, it is not my intention to promote a conception of democracy as fundamentally resisting institutionalization or opposed to the state, as some democratic theorists have.<sup>82</sup> Relatedly, my argument here need not take a side in the emerging debate between cosmopolitan and nationalist republicans on the question of whether republicanism’s commitment to the state renders it an “institution-dependent” theory of justice.<sup>83</sup> It is consistent with an institution-dependent

interpretation of republicanism, as long as it that dependence is understood to be not necessarily sufficient for the realization of freedom as non-domination.

Where Pettit appears to go astray is in his unwillingness to distinguish between a central role for the state and an exclusive one. In a brief section of *Republicanism* he considers and rejects the proposition that non-domination is best pursued via "decentralized" means.<sup>84</sup> This discussion is striking for a few reasons. First, there is the curious framing; it is implied by Pettit that in searching for the best mechanism to pursue non-domination, we are looking for one and only one answer. Either non-domination is pursued through a decentralized, individualistic way, or it is pursued through the state. He introduces this section by arguing that non-domination "is not something that individuals can satisfactorily pursue by relying just on their own private efforts."<sup>85</sup> Elsewhere he characterizes the alternative to a state-only approach to non-domination as action that is potentially collective but necessarily "spontaneous" in organization.<sup>86</sup>

But, of course, non-state actors pursuing non-domination are not limited to the *ad hoc* activities of isolated individuals, nor are their collective efforts devoid of organization and planning: Tostan and Incite! provide clear examples of non-state collectives intentionally, thoughtfully, and non-spontaneously pursuing non-domination. Pettit appears to recognize this when he acknowledges that the "trade union movement almost certainly advanced the non-domination of the workers of the industrial world of the nineteenth century."<sup>87</sup> But after this seemingly important concession, he abruptly states that "there is little reason to be attracted to the strategy of reciprocal power" as it has "too many problems to be taken seriously" without elucidating the nature of those problems.<sup>88</sup>

If we were forced to choose between only pursuing non-domination via the state or via civil society, the case for joining Pettit in choosing the state would not be a difficult one. But the

decision to frame this as a choice that we *must* make is neither explained nor defended. The state can be the most powerful and important tool in the struggle for non-domination, but not the best tool for reducing every instance and type of domination. One of the reasons the state is sometimes an awkward tool for the task is highlighted by Pettit: the danger of *imperium* via an intrusive and overly empowered state. Pettit is surely correct that the fear of *imperium*, while legitimate, is insufficient cause to abandon the state as an agent of non-domination. But domination comes in many forms, and for some of those forms the state is necessarily an ineffective tool. Pettit's wholesale rejection of the democratic value of non-state efforts to resist domination is both unwarranted and unnecessary—especially in light of his avowed sympathy for the causes that might inspire us to pursue this strategy. In addition to causing him to overlook some collective, institutionalized democratic action, it makes it difficult for him to acknowledge and address the problem of partial *imperium*. The more we recognize the incompleteness, gaps, and dangers of relying solely on the state, the more clear the need for a more expansive democratic theory becomes.

At this point, another issue might be raised with respect to my criticisms of Pettit's account of democracy. It could plausibly be argued that two of the lines of critique above, regarding excessive faith in legislative action and the problem of partial *imperium*, might press Pettit's democratic theory in conflicting directions. The criticisms of Pettit's legislative theory offered here overlap with those who worry that Pettit's democratic theory goes too far in disempowering majorities through the scope and power granted to contestatory institutions.<sup>89</sup> In addition to the prospect of contestatory institutions that are either too powerful or too plentiful, a number of specific features of modern legislatures render them particularly vulnerable to the interventions of minorities who a) are not in danger of suffering domination, and b) stand to gain by blocking

legislative action that would reduce domination, because it might interfere with their interests. My criticism here would seem to imply that I worry that Pettit's democratic theory is insufficiently majoritarian in practice. This may appear to conflict with my concern in the following section. There, I argue that Pettit's apparent privileging of prevention of general *imperium* and his relative disregard for the task of preventing partial *imperium*, make it impossible for states to engage in domination-reducing but non-majoritarian action in order to prevent the domination of unpopular minorities. Taken together, it might appear that I am suggesting that Pettit revise his democratic theory in contradictory ways. There is some truth to this, but I believe I can effectively respond by returning to the role of the state and Pettit's institutional monism.

Pettit's excessive optimism about the practical domination-reducing consequences of democratic legislatures (particularly in political systems with significant veto points) reveals him, Ian Shapiro charges, to be "entirely innocent of the literature on veto points." That literature "has made it clear that, as veto players become stronger and veto points multiply, so does protection of the status quo and those who have the resources to wait out opponents."<sup>90</sup> Pettit's optimism about the capacity of most states to simultaneously track the common avowed interests of the citizenry while robustly reducing *dominium* reveals little consideration for the circumstances of deeply divided societies. While these two concerns appear to push Pettit in two opposing directions, they both identify a consequence of excessive optimism regarding state activity. Ignoring non-state efforts to reduce domination leads him to a conception of the state that demands more than it can plausibly deliver. The state, in Pettit's theory, is confronted with an impossible task: it must prevent domination in all of society, while at the same time, consistently do so while tracking that society's common avowable interests.

But it must be up to that task, or Pettit's institutional theory of democracy falls short. His blinders regarding the state's capacity to do all the work of achieving non-domination are absolutely necessary for his theory. Pettit's commitment to institutional monism unnecessarily restricts the scope of his image of the democratic pursuit of non-domination. A significant part of the appeal of non-domination as a conception of freedom is that it renders the state non-special, because domination can originate from many contexts, some of them statist and some decidedly not. In other words, the focus on domination helps us think about the threats to human freedom in a way that might escape the trap of methodological nationalism. But if his characterization of the central dilemma of political theory moves us away from this trap, his characterization of the political solution re-ensnares us in it through what he must expect and demand of the state.

Pettit's state is called upon to accomplish too much. My account here is different from, but consistent with, the argument that Pettit's theory flounders due to its strong value monism—that the admittance of other values beyond freedom as non-domination is necessary for his theory to be successful.<sup>91</sup> My critical arguments regarding Pettit's theory in some sense rely on empirical considerations—regarding the methods of securing non-domination in the first case, the likely behavior of even well-designed legislatures in the second case, and the problem of the existence of common avowable interests that empower the state to avoid *imperium* in the third. What unites these three observations? In all cases, I suggest, they demonstrate how Pettit is under the sway of what some social scientists have identified as “methodological nationalism.” Methodological nationalism is the process of inadvertently naturalizing a set of contingent facts about the nation-states and their role in the world. Ulrich Beck describes methodological nationalism as a kind of conceptual prison that distorts and limits our understanding of all manner of social phenomena.<sup>92</sup>

All of my criticisms of Pettit's approach to democracy problematize the assumed status of the state as the sole location of democratic practice and sole institutional framework through which domination can be resisted. What is needed is not a theory of democracy that is somehow divorced from the state (this would be as foolish as suggesting social scientists escape methodological nationalism by ignoring the state altogether). Rather, democracy's content and value can and should be theorized in a way that enables us to see how democratic political institutions can advance, promote, and partially embody non-domination without becoming the sole site of the struggle. This shift will improve our understanding of how non-domination can and should be pursued through democratic political action, and assist with the formulation of a democratic theory in which the capacity for democratic process to resist domination is unencumbered by methodological nationalism. Once we scale back the too-demanding account of state action in the service of non-domination, we can better engage in a sober accounting of what the state can and cannot accomplish.

Any normatively inclined political theorist, when considering the desirability of a particular institutional arrangement, must choose between two positions: Robert Nozick's view that "whatever arises from a just situation that follows just steps is therefore just" or Ian Shapiro's view that even just hierarchies, when "left unchecked" are potentially in danger of "atrophy[ing] into systems of domination."<sup>93</sup> Nozick's view is consistent with his disinclination to find many forms of non-state domination problematic. But Shapiro's assumption seems much more fitting for a theorist concerned with opposing all forms of domination, regardless of origin. If we choose Shapiro's view, even if the rules and institutional structure of a legislative and contestatory democratic regime are constructed as well as they possibly could be, they might cause—or fail to prevent—some forms of domination. Democracy, understood as our collective



efforts to resist domination, should not be limited to a particular institutional arrangement. A society as free from domination as possible is a goal that requires multiple lines of offense and defense. While Pettit is surely right that decentralized forms of resistance to domination cannot replace or supplant the state, it is a mistake to overlook such forms as a valuable democratic addition to, and not merely support for, state power. The effective pursuit of non-domination in the real world does not require heroes so much as it requires tools for resistance to and insulation from domination. The state is a powerful and indispensable tool in that pursuit, but no tool can do this job on its own.

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<sup>1</sup> See, for example, Frank Lovett, "Domination and Distributive Justice," *Journal of Politics* 71 (July 2009): 817-30; Michael Thompson, "The Limits of Liberalism: A Republican Theory of Social Justice," *International Journal of Ethics* 7 (Summer-Fall 2011): 1-21; Stuart White, "Is Republicanism the Left's 'Big Idea?'" *Renewal* 15 (Winter 2007): 37-46, and "The Republican Critique of Capitalism," *Critical Review of International Social and Political Philosophy* 14 (2011): 561-79; Steven Slaughter, *Liberty Beyond Neoliberalism: A Republican Critique of Liberal Governance in a Globalizing Age* (Basingstoke: Palgrave Press, 2005).

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<sup>2</sup> Martin McIvor, “Republicanism, Socialism, and the Renewal of the Left,” in *In Search of Social Democracy: Responses to Crisis and Modernization*, ed. John Callaghan, Nina Fishman, Ben Jackson and Martin McIvor (Manchester: University of Manchester Press, 2009), 253.

<sup>3</sup> Nadia Urbinati, “Competing for Liberty: The Republican Critique of Democracy,” *American Political Science Review* 106 (August 2012): 607-621.

<sup>4</sup> Philip Pettit, “Republican Freedom and Contestatory Democratization,” in *Democracy’s Value*, ed. Ian Shapiro and Casiano Hacker-Cordon (Cambridge: Cambridge University Press, 1999), 163-90; “Democracy, Electoral and Contestatory,” in *NOMOS XLII: Designing Democratic Institutions*, ed. Ian Shapiro and Stephen Macedo (New York: NYU Press, 2000), 105-144; “Minority Claims Under Two Conceptions of Democracy,” in *Political Theory and the Rights of Indigenous Peoples*, ed. Duncan Ivison, Paul Patten, and Will Sanders (Cambridge: Cambridge University Press, 2000), 199-215; “Depoliticising Democracy,” *Ratio Juris* 17 (March 2004): 52-65; *On the People’s Terms: A Theory and Model of Democracy* (Cambridge: Cambridge University Press, 2012).

<sup>5</sup> Richard Bellamy, *Political Constitutionalism: A Republican Defense of the Constitutionality of Democracy* (Cambridge: Cambridge University Press, 2007); Patchen Markell, “The Insufficiency of Nondomination,” *Political Theory* 36 (February 2008): 9-37; John McCormick, *Machiavellian Democracy* (Princeton, NJ: Princeton University Press, 2011); Ian Shapiro, “On Nondomination,” *University of Toronto Law Journal* 62 (Summer 2012): 293-335, “Competing for Liberty,” Robin Celikates, “Freedom as Non-Arbitrariness or as Democratic Self-Rule? A Critique of Contemporary Republicanism,” in *To Be Unfree: Republican Perspectives on Political Unfreedom in History, Literature, and Philosophy*, ed. Christian Dahl, Tue Andersen Nexø, and Christian Pendergrast (Bielefeld: Transcript-Verlag, 2014), 37-54; Lawrence Hamilton, *Freedom is Power: Liberty Through Political Representation* (Cambridge: Cambridge University Press, 2014), 52-63. For a useful overview of the differences

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between (and the strengths and weaknesses) of Pettit's democratic theory and the more radical-democratic alternatives, see Ricardo Silva, "Non-Domination and Political Institutions: The Contested Concept of Republican Democracy," *Brazilian Political Science Review* 9 (April 2015): 3-38.

<sup>6</sup> Pettit offers a unified account of the meaning of freedom, in which societies and individuals are free (or unfree) in analogous ways. See Philip Pettit, *A Theory of Freedom: From the Psychology to the Politics of Agency* (Cambridge: Cambridge University Press, 2001). However, as Markell notes, the analogy breaks down, as freedom for the society is of instrumental value to individuals, rather than intrinsic value. See Markell, "The Insufficiency of Nondomination."

<sup>7</sup> Philip Pettit, *Republicanism: A Theory of Freedom and Government* (Oxford: Oxford University Press, 1999), 18.

<sup>8</sup> *Ibid.*, 27-31, 41-44.

<sup>9</sup> *Ibid.*, 32. A historical example of relevance here is "the Chesapeake case." Due to the volatility of the global tobacco market, some slaves with specialized skills in the Chesapeake region would, during periods of low tobacco prices, have little short-term labor value to their owners. They would be granted significant but temporary freedoms, in exchange for paying their owners a portion of the wages they earned selling their labor on the market. See Peter Kolchin, *American Slavery: 1619-1877* (New York: Hill and Wang, 1993), 24-27; 74-75.

<sup>10</sup> Pettit, *Republicanism*, 55.

<sup>11</sup> *Ibid.*

<sup>12</sup> Pettit defines avowable interests as those interests that "are conscious or can be brought to consciousness with little effort." See Pettit, *A Theory of Freedom*, 156. On the ambiguities and equivocations of Pettit's uses of the term "avowable" see Markell, "The Insufficiency of Nondomination," 13-16, 33-34 n24.

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<sup>13</sup> Pettit, “Contestatory Democracy and Republican Freedom,” “Democracy, Electoral and Contestatory,” “Depoliticising Democracy,” and “Democracy, National and International,” *The Monist* 89 (April 2006): 301-324.

<sup>14</sup> Pettit, “Democracy, Electoral and Contestatory,” 115.

<sup>15</sup> *Ibid.*, 115.

<sup>16</sup> *Ibid.*, 119.

<sup>17</sup> Pettit, “Republican Freedom and Contestatory Democracy,” 176.

<sup>18</sup> Philip Pettit, *On the People's Terms*, 23.

<sup>19</sup> Charles Larmore, “Liberal and Republican Conceptions of Freedom,” *Critical Review of International Social and Political Philosophy* 6 (2003): 96-119; Melvin Rogers, “Republican Confusion and Liberal Clarification,” *Philosophy and Social Criticism* 34 (September 2008): 799-824; Gopal Sreenivasan, “The Proliferation of Liberties,” *Philosophy and Phenomenological Research* 63 (July 2001): 229-37. The proper understanding of the relationship between liberalism and republicanism has attracted substantial scholarly attention. There are good reasons to be skeptical of the sharp conceptual and historical contrast offered by Pettit. Rogers, in particular, makes what appears to be a compelling case that Pettit, by overstating the Hobbesian nature of liberal freedom and not examining liberal conceptions of freedom in relation to other important political values, has exaggerated the difference between his neo-republican account of freedom and liberal account. Ira Katznelson and Andreas Kalvyas make a persuasive case that liberalism is best understood as a republican response to a particular historical moment; see their *Liberal Beginnings: Making a Republic for the Moderns* (Cambridge: Cambridge University Press, 2008). Similarly, Alex Gourevitch argues that the rise of laissez-faire liberalism in the late nineteenth century is best understood as an attempt to fit republican principles to a new set of circumstances (and contrasted against labor republicans’ socialist republicanism) in “Labor and

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Republican Liberty,” *Constellations* 18 (July 2011): 431-54. While I am persuaded that the relationship between liberalism and republicanism is more complex than Pettit’s account seems to suggest, I take no position on that issue here.

<sup>20</sup> As Charles Larmore observes, Pettit’s classificatory strategy requires conscripting John Locke as a republican, rather than a liberal—in Larmore’s terms, a “desperate remedy.” See Larmore, “A Critique of Pettit’s Republicanism,” *Philosophical Issues* 11 (October 2001): 229-43, at 236. The implication that liberals are uniformly committed to freedom as noninterference obviously can’t account for liberals who focus a great deal on autonomy, such as Joseph Raz. See his *The Morality of Freedom* (Oxford: Oxford University Press, 1986).

<sup>21</sup> Pettit, *Republicanism*, 149.

<sup>22</sup> Okin makes the case that Rawls’s drawings of the public-private boundary are flawed; see Susan Moller Okin, *Justice, Gender and the Family* (New York: Oxford University Press, 1989).

<sup>23</sup> Philip Pettit, “The Determinacy of Republican Policy: A Reply to McMahon,” *Philosophy and Public Affairs* 34 (July 2006): 282.

<sup>24</sup> Pettit, *Republicanism*, 240-70, 280-81.

<sup>25</sup> *Ibid.*, 240.

<sup>26</sup> *Ibid.*, 246, 249.

<sup>27</sup> *Ibid.*, 247-49.

<sup>28</sup> Pettit, *A Theory of Freedom*, 160.

<sup>29</sup> Pettit, *On the Peoples’ Terms*, 75-129; *Just Freedom: A Moral Compass for a Complex World* (New York: W.W. Norton, 2014), 79-108.

<sup>30</sup> Pettit, *On The People’s Terms*, 130-86; *Just Freedom*, 109-149.

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<sup>31</sup> On the language of vertical and horizontal domination, see *Just Freedom*, 6-7, 78, 113. The designation of horizontal seems potentially problematic given the degree of (often justified) hierarchy in a variety of relationships that **might, if corrupted, become dominating** but do not directly involve the state. **Huh???? I think this fixes it.**

<sup>32</sup> Pettit, *On The People's Terms*, 127. He allows for the occasional possibility that norms might replace rather than support laws in discouraging certain behaviors (*Just Freedom*, 94), but without changing the fundamental relationship between them.

<sup>33</sup> Pettit, *Just Freedom*, 113.

<sup>34</sup> The only exception here consists of some recent remarks on the primacy of democracy over social justice: See *On The People's Terms*, 24-25; *Just Freedom*, 190, and "Justice, Social and Political," in *Oxford Studies in Political Philosophy*, ed. David Sobel, Peter Vallentyne, and Steven Wall (Oxford: Oxford University Press, 2015), 9-36.

<sup>35</sup> William Talbott, *Which Rights Should Be Universal?* (Cambridge: Cambridge University Press, 2005), 108.

<sup>36</sup> On the scope and methods of Tostan's success in Senegal and beyond, see Diane Gillespie and Molly Melching, "The Transformative Power of Democracy and Human Rights in Nonformal Education: The case of Tostan," *Adult Education Quarterly* 60 (November 2010): 477-98; see also Karen Monkman, Rebecca Miles, and Peter Easton, "The Transformatory Potential of a Village Empowerment Program: The Tostan Replication of Mali," *Women's Studies International Forum* 30 (November-December 2007): 451-64.

<sup>37</sup> U.S. Department of State, "Senegal: Report of Female Genital Mutilation (FGM) or Female Genital Cutting (FGC)," FGM/FGC Country Reports.

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- <sup>38</sup> Ylva Hernlund and Bettina Shell-Duncan, "Transcultural Positions: Negotiating Rights and Culture," in *Transcultural Bodies: Female Genital Cutting in Transcultural Context*, ed. Ylva Hernlund and Bettina Shell-Duncan (Piscataway, NJ: Rutgers University Press, 2007), 36.
- <sup>39</sup> Gerald Mackie, "Ending Footbinding and Infibulation: A Convention Account," *American Sociological Review* 61 (December 1996): 999-1017.
- <sup>40</sup> Andrea Smith, Beth Richie, Julia Sudbury, and Janelle White, "The Color of Violence: Introduction," in *The Color of Violence: The Incite! Anthology*, ed. The Incite! Collective (Cambridge, MA: South End Press, 2006), 1-10; see also Gretchen Arnold and Jami Ake, "Reframing the Battered Women's Movement," *Violence Against Women* 19 (May 2013): 557-78.
- <sup>41</sup> Smith et al., "The Color of Violence," 1-2.
- <sup>42</sup> Cecile Laborde, *Critical Republicanism: The Hijab Controversy and Political Philosophy* (Oxford: Oxford University Press, 2008), 152.
- <sup>43</sup> Pettit, *On The People's Terms*, 128.
- <sup>44</sup> A similar diagnostic point about the inadequacy of Pettit's reliance on "cooperatively admissible considerations" based on prevailing norms to promote non-domination, particularly with respect to deep patriarchal norms, is made by Alan Coffee, "Two Spheres of Domination: Republican Theory, Social Norms, and the Insufficiency of Negative Liberty," *Contemporary Political Theory* 14 (February 2015): 45-62.
- <sup>45</sup> Chandran Kukathas, *The Liberal Archipelago: A Theory of Diversity and Freedom* (Oxford: Oxford University Press, 2003), 136.
- <sup>46</sup> Naomi Murakawa, "The Origins of the Carceral Crisis: Racial Order as "Law and Order" in Postwar American Politics," in *Race and American Political Development*, ed. Joseph Lowndes, Julie

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Novkov and Dorian Warren (New York: Routledge, 2008), 234-55; Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: New Press, 2012).

<sup>47</sup> A significant literature on the threat of domination due to colonial or neocolonial histories and their impact on state-society relations in much of the global south is worth mentioning here. See, for example, the work of Partha Chatterjee: *The Nation and Its Fragments: Colonial and Postcolonial Histories* (Princeton, NJ: Princeton University Press, 1993), and *The Politics of the Governed: Reflection on Popular Politics in Most of the World* (New York: Columbia University Press, 2006). For a qualified defense of Pettit's relevance for such societies in light of this critique, see Rinku Lamba, "Non-Domination and the State: A Response to the Subaltern Critique," European University Institute Max Weber Programme Working Paper #40, 2008.

<sup>48</sup> Spinner-Halev, *Enduring Injustice* (Cambridge: Cambridge University Press, 2012), 123-28.

<sup>49</sup> Philip Pettit and Jose Luis Marti, *A Political Philosophy in Public Life: Civic Republicanism in Zapatero's Spain* (Princeton, NJ: Princeton University Press, 2010), 56.

<sup>50</sup> Pettit, *A Theory of Freedom*, 106.

<sup>51</sup> *Ibid.*, emphasis added.

<sup>52</sup> Pettit, "Democracy, National and International," 307.

<sup>53</sup> *Ibid.*, 308.

<sup>54</sup> *Ibid.* This characterization of the courts would come as a surprise to American constitutional scholars and jurists, who understand the proper role of the court in much narrower terms and do not consider irrationality in itself a constitutional violation.

<sup>55</sup> Philip Pettit, "A Neorepublican Law of Peoples," *European Journal of Political Theory* 9 (January 2010): 71-94, at 72.



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<sup>56</sup> If a bill promoting a novel and promising new approach to reducing domination and achieving a public good is submitted, sent to a legislative committee, and never heard from again, is this a “false negative” or simply an outcome of a properly functioning legislative system? Would it matter why or how the bill was killed in committee? It is not clear to me what Pettit’s answer would be.

<sup>57</sup> Bryan Jones and Frank Baumgartner, *Agenda Setting and Instability in American Politics* (Chicago: University of Chicago Press, 1993).

<sup>58</sup> On iron triangles, see Theodore Lowi, *The End of Liberalism* (New York: W.W. Norton, 1969); on issue networks, see Hugh Heclo, “Issue Networks and the Executive Establishment,” in *The New American Political System*, ed. Anthony King (Washington, DC: American Enterprise Institute, 1978), 87-124.

<sup>59</sup> Sven Steinmo and Jon Watts, “It’s the Institutions, Stupid! Why Comprehensive National Health Insurance Always Fails in America,” *Journal of Health Politics, Policy and the Law* 20 (Summer 1995): 329-72. George Tsebelis, *Veto Players: How Political Institutions Work* (Princeton, NJ: Princeton University Press, 2002).

<sup>60</sup> Pettit, “Democracy, Electoral and Contestatory.”

<sup>61</sup> Pettit, “Depoliticising Democracy.” For compelling critical accounts of Pettit’s “depoliticized” conception of democracy, see Markell, “The Insufficiency of Nondomination,” McCormick, *Machiavellian Democracy*, and Nadia Urbinati, “Unpolitical Democracy,” *Political Theory* 38 (February 2010): 65-92. Pettit has recently abandoned the language of depoliticized democracy on the grounds that it signals an insufficiently robust commitment to a central role for the people in democratic rule. Pettit, *On the People’s Terms*, 231n44; however, the institutions and the functions they are designed to serve remain similar to the earlier formulation.

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<sup>62</sup> For criticism of Pettit's countermajoritarian tendencies on democratic grounds, see McCormick, *Machiavellian Democracy*, 145-69; Hamilton, *Freedom is Power*, 52-62, and Shapiro, "On Nondomination," 321-32. On the anti-democratic danger of policy "drift" see Jacob Hacker and Paul Pierson, *Winner-Take-All Politics* (New York: Simon and Schuster, 2011).

<sup>63</sup> Pettit, *Republicanism*, 150; emphasis added.

<sup>64</sup> Pettit, *On The People's Terms*, 212.

<sup>65</sup> Pettit, *Just Freedom*, 125; *On The People's Terms*, 216.

<sup>66</sup> Pettit, *Just Freedom*, 125.

<sup>67</sup> Pettit, "Minority Claims," 212.

<sup>68</sup> Fabian Schuppert, "Toward a Republican Understanding of Equality: Non-Domination, Non-Alienation, and Social Equality," *Critical Review of International Social and Political Philosophy* (forthcoming), 12. A similar line of criticism, focusing on the potential shortcomings of Pettit's "intentionality" requirement, can be found in a number of recent commentaries on Pettit's conception of freedom. See, for example, Sharon Krause, "Beyond Non-Domination: Agency, Inequality and the Meaning of Freedom," *Philosophy and Social Criticism* 39 (February 2013): 187-208, 190-93; Clarissa Rile Hayward, "What Can Political Freedom Mean in a Multicultural Democracy? On Deliberation, Difference, and Democratic Governance," *Political Theory* 39 (August 2011): 468-87, at 483; Hamilton, *Freedom is Power*, 55-57; Marie Garrau and Cecile Laborde, "Relational Equality, Non-Domination, and Vulnerability," in *Social Equality: What It Means to Be Equals*, ed. Ivo Wallimann-Helmer, Fabian Schuppert, and Carina Fourie (Oxford: Oxford University Press, 2015), 45-64, at 60-61.

<sup>69</sup> Pettit, *Republicanism*, 199.

<sup>70</sup> *Ibid*, 199-200.

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<sup>71</sup> Pettit suggests that the kind of systemic factors discussed here are best understood as a particularly strong form of vitiating hindrance. *On The People's Terms*, 44.

<sup>72</sup> See *On The People's Terms*, 35-49. The language of invading and vitiating hindrances replaces his earlier distinction between factors that control choice, as opposed to factors that condition it: see Pettit, "Keeping Republican Freedom Simple: On A Difference with Quentin Skinner," *Political Theory* 30 (July 2002): 339-56.

<sup>73</sup> Pettit, *On The People's Terms*, 69-70; *Just Freedom*, 33-38.

<sup>74</sup> An exception is Pettit, "The Determinacy of Republican Policy," 282-83. Here he concludes that in cases where "the local culture may be such that people do not have a common interest in the reduction of some form of private domination ... the state is not authorized to act." This is not precisely on point, as it refers to blocking *dominium* rather than committing *imperium* per se, but insofar as a state allows some forms of *dominium* to be freely and licitly committed, it may reasonably be said to be implicated in that domination.

<sup>75</sup> Pettit, *On The People's Terms*, 24-25; *Just Freedom*, 190.

<sup>76</sup> Of course, such efforts might still come at some democratic cost. On this see Jacob Levy, "Multicultural Manners," in *The Plural States of Recognition*, ed. Michael Seymour (London: Palgrave, 2010), 61-77.

<sup>77</sup> Philip Pettit, "The Domination Complaint," in *NOMOS XLI: Political Exclusion and Domination*, ed. Melissa Williams and Stephen Macedo (New York: NYU Press, 2005), 87-117, 92-100.

<sup>78</sup> Philip Pettit and Frank Lovett, "Republicanism: A Normative and Institutional Research Program," *Annual Review of Political Science* 12 (June 2009): 26.

<sup>79</sup> Pettit and Marti, *A Political Philosophy*, 160.

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<sup>80</sup> Philip Pettit, “Republican Reflections on the Occupy Movement,” in *Up the Republic! Towards a New Ireland*, ed. Fintan O’Toole (London: Faber and Faber, 2012), 175.

<sup>81</sup> See, for example, Elizabeth Anderson, *The Imperative of Integration* (Princeton, NJ: Princeton University Press, 2010), 3-7; Charles Mills, “‘Ideal Theory’ as Ideology,” *Hypatia* 20 (August 2005): 165-183; Amartya Sen, *The Idea of Justice* (Cambridge, MA: Belknap Press, 2009); David Wiens, “Proscribing Institutions without Ideal Theory,” *Journal of Political Philosophy* 20 (March 2012): 45-70 and “Against Ideal Guidance,” *Journal of Politics* 77 (April 2015): 433-446.

<sup>82</sup> Prominent examples of anti-statist democratic theory include Miguel Abensour, *Democracy against the State: Marx and the Machiavellian Moment* (Cambridge: Polity Press, 2011) and Sheldon Wolin, “Fugitive Democracy,” *Constellations* 1 (January 1994): 11-25.

<sup>83</sup> Richard Bellamy, “Republicanism: Non-Domination and the Free State,” in *Routledge International Handbook of Social and Political Theory*, ed. Delanty Gerard and Stephen Turner (New York: Routledge, 2011), 130-38; James Bohman, “Critical Theory, Republicanism, and the Priority of Injustice: Transnational Republicanism as a Nonideal Theory,” *Journal of Social Philosophy* 32 (Summer 2012): 97-112; Lena Halldenius, “The Building Blocks of Republican Cosmopolitanism,” *European Journal of Political Theory* 9 (January 2010): 12-30; Pettit, “A Neorepublican Law of Peoples,” Fabian Schuppert, *Freedom, Recognition and Non-Domination: A Republican Theory of (Global) Justice* (Hiedelberg: Springer-Dordrecht, 2014).

<sup>84</sup> Pettit, *Republicanism*, 92-95; Pettit, “The Domination Complaint,” 95-100.

<sup>85</sup> Pettit, *Republicanism*, 92.

<sup>86</sup> Pettit, “The Domination Complaint,” 100.

<sup>87</sup> Pettit, *Republicanism*, 95.

<sup>88</sup> *Ibid.*

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<sup>89</sup> Bellamy, *Political Constitutionalism*; McCormick, *Machiavellian Democracy*; Shapiro, “On Nondomination”; Urbinati, “Competing for Liberty.”

<sup>90</sup> Shapiro, “On Nondomination,” 328.

<sup>91</sup> Jeff McMahon, “The Indeterminacy of Republican Policy,” *Philosophy and Public Affairs* 33 (January 2005): 68-93; Sharon Krause, “Plural Freedom,” *Gender and Politics* 8 (June 2012): 238-245; Markell, “The Insufficiency of Nondomination;” Schuppert, “Toward a Republican Understanding of Equality.”

<sup>92</sup> Ulrich Beck, “The Cosmopolitan Condition: Why Methodological Nationalism Fails,” *Theory, Culture and Society* 24 (December 2007): 286-90; Ulrich Beck and Natan Sznaider, “Unpacking Cosmopolitanism for the Social Sciences: A Research Agenda,” *British Journal of Sociology* 57 (March 2006): 1-23.

<sup>93</sup> Robert Nozick, *Anarchy State and Utopia* (New York: Basic Books, 1974), 151; Ian Shapiro, *The State of Democratic Theory* (New Haven, CT: Yale University Press, 2003), 4.